

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DENNIS BAKER,
Plaintiff,

vs.

JO ANNE B. BARNHART,
Commissioner of Social Security,
Defendant

MAR 13 2006

PER DEPUTY CLERK

CIVIL ACTION NO. 3:05-1438

(JUDGE NEALON)

(MAGISTRATE JUDGE SMYSER)

ORDER

On February 24, 2006, a Report and Recommendation was issued by United States Magistrate Judge J. Andrew Smyser (Doc. 12) in this action wherein the Plaintiff seeks review of the Commissioner of Social Security Administration's ("Commissioner") denial of disability insurance benefits.¹ (Doc. 1). Magistrate Judge Smyser recommended that the matter be remanded to the Commissioner for further action inasmuch as he concluded that the ALJ improperly failed to proceed past step 2 of the five (5) step evaluation process used to determine if a person is entitled to disability benefits. *See* 20 C.F.R. § 404.1520.² The Report and

¹ Plaintiff filed this action pursuant to 42 U.S.C. §§ 405 (g).

² The steps in the process are as follows: 1) Is the individual engaging in substantial gainful activity? 2) Does the individual have a severe impairment? 3) Does the individual have an impairment which meets or equals the listing of impairments as set forth in 20 C.F.R. part 404, subpart P, *appendix 1*? 4) Does the individual retain the residual functional capacity to engage in his/her past relevant work? and 5) If an individual does not have the capacity to engage in his/her past

Recommendation determined, at step two (2), that the Plaintiff does not have a severe impairment and, therefore, is not disabled. Accordingly, he recommended that the matter be remanded to the Commissioner for consideration of step three (3) analysis.

No objections were filed by any party to the Magistrate Judge's Report and Recommendation.³ After careful consideration, the court finds the recommendations of the Magistrate Judge well reasoned and legally sound. Consequently, after careful review and in the exercise of sound judicial discretion, the court adopts the Magistrate's Report and Recommendation in full.

ACCORDINGLY, THIS 13th DAY OF MARCH, 2006, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation (Doc. 12) is ADOPTED;
2. The case is remanded to the Commissioner for further action.
3. The Clerk of Court is directed to close the case.

s/ William J. Nealon
United States District Judge

work, does s/he retain the capacity to perform jobs which exist in significant numbers in the national economy? See Social Security Ruling 86-8; 20 C.F.R. §404.1520.

³ On March 10, 2006, defendant informed the court that it was waiving its rights to file objections to the Report and Recommendation. (Doc. 13).